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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/653,071	09/03/2003	Alain Baranger	0514-1120	2012

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EXAMINER

SMALLEY, JAMES N

ART UNIT	PAPER NUMBER
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3727

DATE MAILED: 03/27/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/653,071

Applicant(s)

BARANGER ET AL.

Examiner

James N. Smalley

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 January 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) 9 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8 and 10-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 12/3/03
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

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DETAILED ACTION

Election/Restrictions

1. Applicant's election without traverse of Invention (I) in the reply filed on 03 January 2006 is acknowledged.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 1-8 and 10-21 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

The Specification notes on page 7, line 21, that the first embodiment of the invention is shown in "figures 1, 3, 4-7 and 12." However, for example, figure 2 is listed as a view of the embodiment of figure 1. Furthermore, figure 6 is listed as a variant of the first embodiment. It is unclear what figures comprise the first embodiment. To the best degree the Examiner understands the claimed invention, figures 1-5 disclose the preferred embodiment, according to the Brief Description of the Drawings section of the instant Specification.

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 4, 6, 10, 12-13 16-17 and 21 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

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The claims are drawn to a non-elected embodiment. Examiner notes the Specification, as well as the Brief Description of the Drawings, notes the subject matter claimed in these claims as being drawn to alternative embodiments.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 1-3, 5, 11, 15 and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Braun US 3,977,564.

Braun '564 teaches a door for covering a container, comprising a curved plate (5) fixed to two guide rods (11) without play, with the guide rods being connected by longitudinal connection elements (13), and an arched support plate (3). An annular gap (9) is created between the annular rings (7) and (8) allowing for expansion of the rubber membrane (6) to seal against flange (3).

Regarding claim 2, the device is capable of being used in the intended manner, i.e. is capable of being outwardly deformed. It has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987).

8. Claims 1-3, 5, 7-8, 11, 15 and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Howard US 5,673,874.

Howard '874 teaches an arched metal door (10) guided within profiled elements (30) and (31) without play, and with longitudinal connection elements (5).

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Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Braun US 3,977,564 in view of Groehn US 1,827,743.

Braun '564 fails to teach the door being formed of metal. However, Examiner notes the outer shell is cross-hatched in the drawings consistent with metal. See MPEP 608.02, "Drawing Symbols."

To the degree that the cross-hatching is not held to be a clear and positive teaching of the outer wall being formed of metal, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the outer shell, forming it of metal. In col. 1, lines 62-66, Braun '564 teaches the container is pressurized.

It would be obvious to one having ordinary skill in the art at the time the invention was made to form the door of metal to provide rigidity and prevent deformation or leaking, during the pressurization of the tank. Furthermore, it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

11. Claims 19-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Braun US 3,977,564 as applied above under 35 U.S.C. 102(b) to claim 18, in view of Jelinek US 4,254,960.

Braun '564 teaches expanding a rubber membrane through an annular gap, but does not teach an inflatable joint formed of a ring mounted in a groove.

Jelinek '960 teaches a means of providing a gasket on a curved door for a missile or other curved body, comprising an annular groove (14) into which is provided a sealing gasket (35). The gasket of Jelinek '960 is already in the operative position, i.e. it is already in place for sealing contact, whereby the

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gasket of Braun '564 must be expanded through a gap. The gasket taught by Jelinek '960 is thus desirable because sealing contact is instantly formed and maintained.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the cover of Braun '564, providing a groove and further providing a sealing gasket, as taught by Jelinek '960, motivated by the benefit of sealing about the opening of the container.

Conclusion

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:
See attached PTO-892 citing relevant references.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James N. Smalley whose telephone number is (571) 272-4547. The examiner can normally be reached on M-Th 9-6:30, Alternate Fri 9-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Newhouse can be reached on (571) 272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

jns


NATHAN J. NEWHOUSE
SUPERVISORY PATENT EXAMINER